
PLAN OF MERGER

Pensacola Historical
Society, Inc. and
West Florida
Historic
Preservation, Inc.

December ____, 2008

PLAN OF MERGER
PENSACOLA HISTORICAL SOCIETY, INC.
AND
WEST FLORIDA HISTORIC PRESERVATION, INC.

THIS PLAN OF MERGER is entered into this ____ day of _____, 2008 (“Plan Date”) by and between **Pensacola Historical Society, Inc.** (“PHS”), a Florida non-profit corporation with its principal place of business at 110 East Church Street, Pensacola, Florida 32502, and **West Florida Historic Preservation, Inc.** (“WFHPI”), a Florida non-profit corporation with its principal place of business at 120 East Church Street, Pensacola, Florida 32502. The Plan of Merger incorporates all exhibits and attachments to the Plan of Merger.

Recitals

WHEREAS, PHS has, for nearly seventy-five years worked to preserve Pensacola history through maintaining publicly accessible research and exhibition facilities whose mission is to promote scholarship, exhibition, and publication; and

WHEREAS, PHS has developed a strong reputation as a publisher of historical books, magazines, and maps and PHS preserves and protects many one-of-a-kind artifacts and manuscript materials and owns over 100,000 photographs, offering rare views of Pensacola and Northwest Florida history; and

WHEREAS, WFHPI is active in the areas of museum exhibition, living history program development, and historic preservation; and

WHEREAS, WFHPI serves as a designated support organization of the University of West Florida (“UWF”), assisting UWF in carrying out its dual historic

preservation and historic preservation education purposes and responsibilities for the City of Pensacola, Escambia County, and the West Florida region; and

WHEREAS, PHS and WFHPI desire to combine their operations into a single non-profit corporation, pursuant to Chapter 617 of the Florida Statutes, section 617.1105 (the “Merger”); and

WHEREAS, PHS and WFHPI offer complementary, not competing programs, and merging these two organizations together will allow the development of comprehensive programs in museum studies, interpretation, archives management, and historic preservation; and

WHEREAS, the parties have decided that WFHPI will form an organizational division that will continue programs reflecting the purposes and activities of PHS related to research, publication, and membership program support; and

WHEREAS, consistent with the Merger, the parties believe that it is in their best interests to achieve their mutual objectives by transferring the assets of PHS to WFHPI in exchange for assumption by WFHPI of all of the liabilities of PHS, as more fully set forth in the Plan.

NOW, THEREFORE, in consideration of the mutual promises and covenants expressed in the Plan, it is agreed as follows:

SECTION 1 THE MERGER

1.1 Upon the terms and conditions set forth in the Plan of Merger, and in accordance with Florida law, PHS shall be merged with and into WFHPI on the Effective Date, subject to the Progression Triggers set forth below. Following the Merger, the separate existence of PHS will cease and WFHPI will continue on as the surviving

corporation and shall succeed to and assume all of the rights and obligations of PHS in accordance with Florida law. WFHPI will amend its Bylaws in conjunction with this Merger following receipt of any necessary approvals.

1.2 The Merger shall become effective on the Effective Date, as defined in Section 1.3, below (“Effective Date”). Any remaining documents required by the Plan of Merger to be executed in connection with the Merger must be executed not later than the Effective Date.

1.3 Progression Triggers to achieve the Merger are set forth as follows:

1.3.1 October 2008: Both PHS and WFHPI approve this Plan of Merger.

1.3.2 December 12, 2008: Plan of Merger is submitted to the Board of Trustees of the University of West Florida for approval.

1.3.3 December 17, 2008: The PHS Endowment will be transferred to the UWF Foundation, Inc., a designated support organization of UWF (the “Foundation”), pursuant to the terms of the endowment agreement between the Foundation and PHS in form acceptable to the University.

1.3.4 Upon receipt of evidence satisfactory to the President of UWF showing (i) that the properties of PHS are in acceptable condition or that the costs of bringing the properties into acceptable condition has been paid or provided for; and (ii) that all outstanding liabilities of PHS have been paid or provision for their payment has been made: With the merger of PHS as an organizational division of WFHPI, ownership of collections, all personal property, and all real property of the PHS shall be transferred to WFHPI, and staff positions will be incorporated into UWF to the extent approved by WFHPI and the University.

1.3.5 Effective Date: With the Merger, PHS will be dissolved as a corporate entity.

1.3.6 The Effective Date shall be the date upon which all of the conditions set forth in this Section 1.3 shall have been satisfied.

SECTION 2 MODIFICATIONS TO WFHPI'S BYLAWS

2.1 The parties have agreed that the Bylaws of WFHPI will be modified to incorporate references to the Merger and the continued role of PHS as an organizational division of WFHPI, as more fully outlined in Exhibit "A," attached and incorporated by reference.

2.2 The amended Bylaws will be effective as of the Effective Date.

2.3 The parties have agreed that the Bylaws of the WFHPI will be amended consistent with the language contained in Exhibit "A," subject to receipt of any necessary approvals, and that on and after the Effective Date, WFHPI will operate consistent with the amended Bylaws set forth in Exhibit "A," except as the same may be further amended in accordance with its provisions. Notwithstanding the provisions hereof, however, WFHPI may make such changes to the Bylaws as may be required to retain its 501©(3) status or to meet the requirements of the University, the Florida Board of Governors, or the laws of the State of Florida.

SECTION 3 TRANSFER OF ASSETS AND LIABILITIES

3.1 In reliance upon the mutual representations, warranties, and covenants of WFHPI and PHS and upon the terms and subject to the conditions of this Plan, and in

accordance with Florida law, WFHPI agrees to acquire and accept , and PHS agrees to and does grant, convey, transfer, assign and deliver its Assets to WFHPI:

3.1.1 As of the Effective Date of the Merger, any and all of PHS's right, title and interest to the real property and buildings thereon owned by PHS, known as the Pensacola Historical Museum and the Norman Simons Historical Research Center Buildings, and more particularly described in Exhibit "B," attached and incorporated by reference, subject only to standard title exceptions, will be transferred to WFHPI.

3.1.2 As of the Effective Date, the following shall be transferred by PHS to, and become the property of, WFHPI:

- (a) All grants in effect for the performance of services by PHS;
- (b) All cash on hand and due from banks and others;
- (c) All securities of every kind and type;
- (d) All contract rights (including, without limitation, rights under any lease), accounts receivable, and promissory notes to PHS or similar promises to pay PHS;
- (e) All business records and books;
- (f) All and any rights under funding agreements or contracts with federal, state, or local governments and others, including, without reservation, endowments and potential matching funds from the State of Florida.
- (g) All personal property, including without limitation, collections, equipment, furniture, office supplies, and inventory.

3.2 All of the real and personal property of PHS, as well as all rights and interests of PHS, whether or not listed above, will be deemed to be transferred to and vested in WFHPI without further act or deed as of the dates noted above, but no later than the Effective Date.

3.3 PHS does irrevocably authorize and empower WFHPI, its officers, directors, employees and agents, to have and exercise, as of the Effective Date, all of the same rights, privileges and discretionary powers with respect to the Assets, either in its own right or for the benefit of others, as PHS, its officers, directors, employees and agents, or any of them, formerly might have exercised, together with the same powers of delegation and substitution.

3.4 All proceeds, rents, and income of the Assets, and all gifts, contributions, bequests, or other funds receive by PHS in any form on or after the Effective Date, whether accruing or receivable before of after the Effective Date, shall be immediately delivered to WFHPI.

3.5 On or after the Effective Date, PHS and its directors, officers, employees and agents shall use its and their best efforts to assist WFHPI in locating, identifying, recovering, and delivering to WFHPI any Asset not delivered into the possession of WFHPI on the Effective Date.

3.6 As of the Effective Date, the separate existence of PHS shall cease.

SECTION 4 DELIVERY OF POSSESSION; CONTINUITY OF OPERATIONS

4.1 PHS shall deliver possession of the Assets to WFHPI no later than the Effective Date, and shall thereupon deliver to WFHPI access to its premises, real properties, whether owned or leased, its facilities, and all of indicia of possession.

4.2 Prior to the Effective Date, PHS agrees to continue to operate as usual, using reasonable business judgment and not to waste any of the Assets and not to sell, transfer, or otherwise dispose of any of the Assets other than in the ordinary course of business.

4.3 Prior to the Effective Date, WFHPI agrees to continue to operate as usual, using reasonable business judgment and not to waste any of its real or personal property and not to sell, transfer, or otherwise dispose of any of the real or personal property other than in the ordinary course of business.

SECTION 5 ASSUMPTION OF LIABILITIES/INSURANCE

5.1 A Schedule of Known Financial Obligations (“Schedule”) which is not associated with any of PHS’s real property has been provided to WFHPI. The Schedule includes specific identification of any and all existing debts, loans leases, lease purchase agreements, installment sales and other similar contracts or obligations where the actual or potential cost to WFHPI may reasonably be expected to be greater than \$500 per year. Such liabilities, accrued or contingent, are assumed by WFHPI as of the Effective Date.

5.2 The parties shall take all necessary steps to ensure that the property/hazard (including the property insurance for each of the real properties), officers’ and directors’ liability, and comprehensive general liability insurance policies of PHS and WFHPI are harmonized so that as of the appropriate date, the real and personal property of PHS, including the Assets, are documented by WFHPI’s insurer and such property is fully insured against hazards; and there will be no gap in either commercial general liability, or officers’ and directors’ liability coverage for acts or omissions of PHS or its employees, directors, officer, or agents while acting within the scope of their duties for PHS prior to

the Effective Date, whether such coverage is written on a claims made or an occurrence basis. Prior to the Effective Date, the parties shall document the necessary arrangements with insurers to meet the provisions of this section and section 5.1 and shall provide such documentation to each other and their counsel. Both parties shall fully cooperate with any requests by the other party in implementing this provision.

SECTION 6 CONDITIONS OF PHS'S AND WFHPI'S OBLIGATIONS

All obligations of PHS under the Plan are subject to the fulfillment of each of the following conditions at or prior to the Effective Date: 1) approval by the Board of Directors of WFHPI and PHS; 2) approval by the Board of Trustees of UWF if so required by UWF; 3) and occurrence of the Progression Triggers set forth in Section 1 above.

SECTION 7 WARRANTIES AND REPRESENTATIONS

PHS and WFHPI have each entered into the Plan in reliance up on the following warranties and representations made by each to the other:

7.1 Each is a tax-exempt 501(c)(3) non-profit organization duly organized, validly existing and in good standing under the laws of the State of Florida; each has corporate power to own its own property and conduct its business as currently conducted; and each has full corporate power to enter into this Plan of Merger and to carry out all of its terms and provisions to be carried out by each.

7.2 The financial statements delivered by PHS to WFHPI represent the accurate financial condition of PHS and the result of its operations at the date and for the

periods covered by such statements in accordance with generally accepted accounting principles consistently applied throughout the periods covered by said statements. Such financial statements shall be supplemented as required by WFHPI.

7.3 Since the date that the financial statements were provided by PHS there have been no material changes in the financial condition of PHS and it has not incurred or discharged any material indebtedness, liability or obligation, other than as agreed upon and/or as a result of operations in the ordinary course of business.

7.4 PHS has good title to the Assets being transferred to WFHPI, and conveys the same free and clear of all encumbrances, except as otherwise stated in the Plan or provided in writing to WFHPI.

7.5 Except as previously disclosed in writing to WFHPI, PHS knows of no claims or threatened claims which could reasonably be expected to result in the creation or existence of any lien, encumbrance, interest, claim or demand on or against the Assets or against WFHPI.

7.6 There is no litigation or claim of any nature whatsoever pending, or to either parties' knowledge, threatened against either party, including, but not limited to, claims or potential claims by either parties' employees, and neither party knows of any basis for such action.

7.7 All documents and statements delivered by either party to the other which are not listed as an Exhibit to the Plan shall be certified as true and accurate as of the date of the documents to the best of either parties' knowledge, information, and belief. All representations and warranties of PHS and WFHPI contained in this Plan and all statement and certificates delivered pursuant to the Plan shall be true and accurate as of

the date when made and shall be deemed to be made again at and as of the Effective date, and shall then be true and accurate in all material aspects, unless written notice to the contrary is provided.

7.8 To the best of their respective knowledge, each party has substantially complied with, and it is not in default in any material respect under any laws, regulations, ordinance, orders or decrees applicable to the conduct of their respective businesses, and each has filed with proper governmental authorities and with any funding agencies all material reports and other documents required to be filed.

SECTION 8 ASSETS AND LIABILITIES

Within thirty (30) days of the Plan Date, PHS shall deliver to WFHPI a complete list of all Assets and liabilities of PHS.

SECTION 9 PERSONNEL

9.1 PHS will provide WFHPI with schedules within thirty days (30) of the Plan Date which identify each and every current paid staff member of PHS and the title and position as of the Plan Date. As of the Effective Date, PHS will represent that it is unaware of any current or pending obligation it owes or may owe to any former employee, that every employee of PHS either has a written contract or is an employee-at-will, and that there are no claims pending in any judicial or administrative forum by or on behalf of any former employee. PHS does not have any other employment commitments as of the date of execution of this Plan.

9.2 PHS and WFHPI agree that, prior to the Effective Date, specific arrangements for the continued employment or termination of each current staff member of PHS shall be made and communicated, in writing, to the staff member. Said arrangements shall, in every case, be acceptable to the Executive Directors of PHS and WFHPI and said acceptance shall be ascertained pursuant to this Plan before any communication is made to the employee. It is expressly understood that UWF will be the employer, and that its concurrence and cooperation is required as to each position and description.

9.3 A copy of every written communication made by management to or received by management from the employees of PHS shall be sent to the Executive Director of WFHPI if the communication is relevant to the continuation or termination of any employee's employment following the Effective Date.

9.4 PHS represents to WFHPI that, to the best of the Executive Director's and Board's knowledge, none of the provisions of the Plan will violate any expressed or implied obligation that PHS has to any current or former employee.

9.5 PHS and WFHPI agree that specific arrangements for continuation and modification of employee benefits requires the cooperation of UWF, and agree that this information will be communicated in writing to the remaining employees of PHS in a manner and at such times as are determined by PHS and WFHPI in their discretion. Such arrangements shall be communicated to each remaining employee no later than two weeks prior to the Effective Date.

9.6 PHS shall transfer all personnel records, including all medical records, benefits, and payroll information to UWF on the Effective Date, and UWF shall maintain

all such records as confidential business records (subject to the Florida Open Records Act) for at least such period as PHS would have been required to retain the records had the employees remained employed with PHS.

**SECTION 10
FILING WITH GOVERNMENTAL AGENCIES**

On or before the Effective Date, the parties shall take all steps necessary to file all documentation required by the State of Florida in connection with: (i) the Merger, (ii) the amendment of WFHPI's Bylaws, and (iii) the termination of the corporate existence of PHS.

EXECUTED by the parties the day and year first above written

West Florida Historic Preservation, Inc.

Pensacola Historical Society, Inc.

J. Earle Bowden
Its President

By: _____
Its: _____

Board approval: _____

Board approval: _____

Approved by The University of West Florida

Judy Bense
Its: President

Approved as to Form and Legality:

Patricia D. Lott, General Counsel
Office of General Counsel